
2000 RESIDENCY LAWS, TERMS, & CONCEPTS

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Reviewed: January 2004

2100 DEFINITION OF RESIDENT

CR&TC section 17014(a) defines "resident" as:

- Every individual who is in this State for other than a temporary or transitory purpose; and
- Every individual domiciled in this State who is outside the state for a temporary or transitory purpose.

Residency determines what income is taxable by California. The theory behind California residency law is to define the class of individuals who should contribute to the support of this State.

CR&TC section 17014(b) provides a special rule for certain United States Government officials and their spouses. If those individuals have a California domicile, we will consider their absences from this state as temporary or transitory. They remain California residents. This rule applies to the following persons:

- Any elected U.S. official.
- Anyone on the staff of a member of the U.S. Congress.
- Any presidential appointee, subject to Senate confirmation, other than military and Foreign Service career appointees.

CR&TC section 17014(c) provides that any individual who is a resident of California remains a resident even though temporarily absent.

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2200 TEMPORARY OR TRANSITORY PURPOSE

California Code of Regulations section 17014(b) provides a detailed discussion of the meaning of "temporary or transitory purpose." According to this regulation, the determination of whether or not an individual is in this state for temporary or transitory purposes depends to a large extent upon the facts and circumstances of each particular case.

Generally, we consider an individual to be in California for a temporary or transitory purpose, and therefore a nonresident of California, if he or she is:

- Simply passing through this State.
- Here for a brief rest.
- Here for a vacation.
- Here for a short period to complete a particular transaction, perform a particular contract, or perform a particular engagement.

Example 1: James and Janice are domiciled in Minnesota where they have maintained their family home for seven years. James works for a state agency in Minnesota. In October 2000, James took a six-month leave of absence to become a temporary consultant for a California company. James and Janice moved to Los Angeles, CA in October 2000, where they rented an apartment and opened a checking account. Their home in Minnesota was left vacant and they retained their Minnesota bank accounts. They stayed in California from October 2000, to April 2001, and returned to Minnesota in April 2001.

Determination: James and Janice were in California for a short period in order for James to complete a particular engagement as a temporary consultant. James and Janice are nonresidents of California because they were in California for a temporary or transitory purpose.

An individual will be considered to be in California for other than temporary or transitory purposes, and therefore a California resident, if he or she is in this State:

- To recuperate from injury or illness for a relatively long or indefinite period.
- For a business purpose which will require a long or indefinite period to accomplish.
- For employment in a position that may last permanently or indefinitely.
- For retirement with no definite intention of leaving shortly.

Example 2: Bob is domiciled in Ohio and has lived there for 50 years. Two years ago Bob developed a serious medical condition. His doctor told him to live in California until he recovers. The illness may last for several years. Bob took his doctor's advice and moved to California two years ago.

Determination: Bob is in California for an indefinite period in order to recuperate from an illness. He is a California resident because his stay in California is not for a temporary or transitory purpose.

A person's presence is also relevant when determining whether a person who is domiciled in California is absent from California for a temporary or transitory purpose. See the *Appeal of Anthony V. and Beverly Zupanovich*, 1976-SBE-002, January 6, 1976, and the *Appeal of George J. Sevcsik*, 1968-SBE-018, March 25, 1968.

According to CCR section 17014(b), the state with which a person has the closest connections during the taxable year is the person's state of residence. In the *Appeal of Richard L. and Kathleen K. Hardman*, 1975-SBE-052, August 19, 1975, the Board of Equalization held that the connections which a taxpayer maintains in this and other states are important objective indications of whether presence in or absence from California is for a temporary or transitory purpose.

Such connections are important as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. See the *Appeal of Anthony V. and Beverly Zupanovich*, supra, and the *Appeal of David J. and Amanda Broadhurst*, 1976-SBE-036, April 5, 1976. According to the *Broadhurst* appeal, contacts that are considered relevant include:

Family home	Voting registration
Bank accounts	Driver's license
Business interests	Real property ownership

Other contacts to be considered include the use of professional services and membership in religious and social organizations. See the *Appeal of Bernard and Helen Fernandez*, 1971-SBE-016, June 2, 1971.

It is particularly relevant to determine whether the taxpayer substantially severed his or her California connections upon departure and took steps to establish significant connections with the new place of abode. It is also necessary to determine whether the connections in California were maintained in readiness for his or her return. See the *Appeal of Richard L. and Kathleen K. Hardman*, supra.

Whether a person was in California for other than a temporary or transitory purpose must be determined by examining all of the facts. Mere formalisms such as changing voting registration to another state or statements to the effect that the taxpayer intended to be a resident of another state are not controlling. See the *Appeal of Tyrus R. Cobb*, 1959-SBE-014, March 26, 1959.

Note that retention of some contacts such as bank accounts and a driver's license may only be a reflection of the taxpayer's past and may not be inconsistent with an absence for other than temporary or transitory purposes. See the *Appeal of Richard L. and Kathleen K. Hardman*, supra.

Example 3: Prior to 2000, Charles was a resident of New York with a successful law practice there. In the summer of 2000, he closed his New York law practice, came to California, purchased a home in California, opened California bank accounts, passed the California bar exam, and entered into a California law partnership. Charles canceled the lease on his New York apartment when he purchased the California home. However, he kept his New York driver's license and retained his New York bank account.

Determination: Charles became a California resident in the summer of 2000, when he began severing his ties with New York and established significant connections with California. The New York driver's license and bank account were merely the result of his prior New York residence.

Reviewed: January 2004

2300 SEASONAL VISITORS, TOURISTS, AND GUESTS

California Code of Regulations section 17014(b) provides that an individual whose presence in California does not exceed an aggregate of six months within a taxable year and who is domiciled without the State and maintains a permanent abode at the place of his domicile, will be considered as being in this State for temporary or transitory purposes. However, he or she must not engage in any activity or conduct within this State other than that of a seasonal visitor, tourist, or guest.

The following connections with California will not, by themselves, cause a seasonal visitor, tourist, or guest to lose his or her status as such:

- Owning or maintaining a home.
- Opening a bank account for paying personal expenses.
- Having membership in local social clubs.

Example 1: Bill and Sue lived and worked in North Dakota for 20 years until their retirement in the summer of 1999. Beginning the winter of 1999, Bill and Sue spend four months each year in California. They spend the remaining eight months in North Dakota. While in North Dakota, they live in a home they have owned since 1980. They hold valid North Dakota driver's licenses, are registered to vote in North Dakota, and maintain North Dakota bank accounts. Bill and Sue also own a California home, which they use while in California. They also opened a California checking account for their personal expenses and are members of a California country club. While in California, they do not engage in any California business activities.

Determination: Bill and Sue are considered to be seasonal visitors, in California for temporary or transitory purposes. Therefore, they are nonresidents of California.

Reviewed: January 2004

2400 PRESUMPTION OF RESIDENCE

CR&TC section 17016 states:

"Every individual who spends in the aggregate more than nine months of the taxable year within this state shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the state for a temporary or transitory purpose.

Note that CR&TC section 17016 merely provides a presumption of residence. The presumption can be overcome. For example, in the *Appeal of Edgar Montillion Woolley*, 1951-SBE-005, July 19, 1951, the Board of Equalization ruled that the taxpayer was in California for a temporary or transitory purpose even though he was in California for more than nine months during the year. The decision was based on the fact that during his stay in California, Mr. Woolley lived in a hotel on a weekly basis and his departure was delayed because of illness and a studio strike.

Presence within California for less than nine months does not constitute a presumption of nonresidency. See the *Appeal of Warren L. and Marlys C. Christianson*, 1972-SBE-022, July 31, 1972, and the [*Appeal of Raymond T. and Ann B. Stefani*](#), 1984-SBE-137, September 12, 1984. In addition, there is no presumption that persons who are outside California for nine or more months are nonresidents.

Reviewed: January 2004

2500 DEFINITION OF DOMICILE

Domicile is an integral part of the definition of resident. An individual domiciled in California and absent from the State for a temporary or transitory purpose is considered to be a California resident. An individual's domicile also determines whether income received by a husband or wife is community or separate income.

California Code of Regulations section 17014(c) defines the term "domicile" as the place where an individual has his or her true, fixed, permanent home and principal establishment. It is the place to which, whenever absent, he or she has the intention of returning. It is the place in which a person has voluntarily fixed his or her habitation and the habitation of his or her family. It is the place where a person has the present intention of making a permanent home, until some unexpected event shall occur to induce him or her to adopt another. It is not a place where a person is living for a mere special or limited purpose.

As stated by the California Court of Appeal, "domicile" is the one location with which, for legal purposes, a person is considered to have the most settled and permanent connection. It is the place where they intend to remain and to which, whenever they are absent, they have the intention of returning. See *Whittell v. Franchise Tax Board*, 231 Cal.App.2d 278 (1964).

An individual can have only one domicile at a time. If an individual has acquired a domicile at one place, the individual retains that domicile until another is acquired elsewhere.

A California domiciliary leaving the State retains his or her California domicile as long as he or she has the definite intention of returning here. This is true regardless of the length or reason of the absence. An individual domiciled in California, who leaves the State, loses his or her California domicile at the moment he or she abandons any intention of returning to California and locates elsewhere with the intention of remaining there indefinitely.

The concept of domicile involves not only physical presence in a particular place, but also the intention to make that place one's home. See the *Appeal of Anthony J. and Ann S. D'Eustachio*, 1985-SBE-040, May 8, 1985.

The burden of proving the acquisition of a new domicile is on the person asserting that domicile has been changed. See the *Appeal of Frank J. Milos*, 1984-SBE-042, February 28, 1984.

Example 1: Adam, who is domiciled in Illinois, comes to California on business but intends to return to Illinois as soon as his business in California is completed. He maintains a California home while in California and stays in California for 11 months.

Determination: Adam retains his Illinois domicile. His stay in California is for a limited purpose.

The information provided in the Franchise Tax Board's internal procedure manuals does not reflect changes in law, regulations, notices, decisions, or administrative procedures that may have been adopted since the manual was last updated

Example 2: Mark moved from Alaska to California in October 2000 to begin a permanent job. He sold his home in Alaska and purchased a home in California. He moved all his personal belongings to California, opened a California bank account, and obtained a California driver's license. He has no intention of returning to Alaska.

Determination: Mark became a California domiciliary in October 2000 when he moved to California. He came to California with the intention to remain here indefinitely with no fixed intention of returning to Alaska.

Example 3: Allen and his wife Ellen were both born and raised in California. Upon graduation from a California college, Allen obtained employment in Los Angeles, CA. In 1999, Allen was sent to France for a one-year assignment. Ellen remained at their home in California with their two children. While in France, Allen rented an apartment and joined a local soccer league. He returned to California in 2000.

Determination: Allen remained a California domiciliary during his absence. He did not sever his ties with California and the ties established with France did not show that he intended to remain there permanently.

Reviewed: January 2004

2600 DOMICILE V. RESIDENCY

Domicile and residency are not synonymous. California distinguishes them as two separate concepts. For income tax purposes, residency determines what income is taxable to California. Domicile is an important component of residency and determines whether income is split between spouses.

Domicile is the place where an individual has his or her true, fixed, permanent home and principal establishment [California Code of Regulations section 17014(c)]. Domicile requires both physical presence in a particular locality and the intent to make this locality one's permanent abode. Residence is any factual place of abode of some permanency that is more than a mere temporary sojourn. See *Whittell v. Franchise Tax Board*, 231 Cal.App.2d 278 (1964).

An individual can have only one domicile at any given time, but can have several residences. See *Whittell v. Franchise Tax Board*, supra.

The key distinction between domicile and residency is intent. A new domicile is acquired by the actual change of residence in a new place of abode, coupled with the intention to remain there either permanently or indefinitely without any fixed or certain purpose to return to the former place of abode. (*Appeal of Robert J. and Kyung Y. Olsen*, 1908-SBE-134, October 28, 1980.) A determination of residence cannot be based solely upon the declared intention of the parties, but must have its basis in objective facts. (*Appeal of Nathan H. and Julia M. Juran*, 1968-SBE-004, January 8, 1968). In determining residency, voluntary physical presence is a factor of greater significance than the mental intent or outward formalities of ties to another state. See *Whittell v. Franchise Tax Board*, supra.

Frequently, a person's domicile and residence are the same physical location. See *Whittell v. Franchise Tax Board* supra. However, a person's domicile and residence may not be the same. See the *Appeal of Warren L. and Marlys Christianson*, 1972-SBE-022, July 31, 1972. An individual may be a resident although not domiciled in this State, and conversely, may be domiciled in this State without being a resident. (CCR section 17014 and the *Appeal of Terance and Brenda Harrison*, 1985-SBE-059, June 25, 1985).

Reviewed: January 2004

2700 DEFINITION OF NONRESIDENT

California Revenue and Taxation Code section 17015 defines "nonresident" as:

- Every individual other than a resident.

Therefore, if an individual is not a resident, he or she is a nonresident.

If the spouse and children of a California nonresident are in this state for other than a temporary or transitory purpose, they are residents of California.

For taxable years beginning on or after January 1, 1994:

CR&TC section 17014(d) states that an individual who is domiciled in this state but is absent from this state for an uninterrupted period of at least 546 consecutive days (18 months) under an employment-related contract shall be considered outside the state for other than a temporary or transitory purpose and is a nonresident of California. A taxpayer's return to California for up to 45 days during the tax year will be disregarded in determining the 546 consecutive days. This definition applies to a spouse accompanying the taxpayer. This definition does not apply if:

- The individual or spouse has income from intangibles in excess of \$200,000 in any taxable year the employment related contract is in effect, or
- The principal purpose of the individual's absence is to avoid taxes.

If the provisions of CR&TC section 17014(d) are not met:

When a California domiciliary works outside the State, his or her absence will be considered as being for other than a temporary or transitory purpose if the work is expected to last a long, permanent, or indefinite period of substantial duration. See the *Appeal of Anthony V. and Beverly Zupanovich*, 1976-SBE-002, January 6, 1976. The fact that a foreign assignment ends sooner than expected does not require a conclusion that the assignment was for a temporary or transitory purpose. See the *Appeal of Jeffrey L. and Donna S. Egeberg*, 1985-SBE-075, July 30, 1985 and the *Appeal of William G. and Susan G. Crozier*, 1992-SBE-005, April 23, 1992. Permanent departure is not required. The taxpayer only needs to be absent for other than a temporary or transitory purpose. See the *Appeal of Basil K. and Floy C. Fox*, 1986-SBE-071, April 9, 1986.

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2800 DEFINITION OF PART-YEAR RESIDENT

California Revenue and Taxation Code section 17015.5 (applicable for taxable years beginning on or after January 1, 2002) defines "part-year resident" as a taxpayer who meets both of the following conditions during the same taxable year:

- Is a resident of California during a portion of the taxable year.
- Is a nonresident of California during a portion of the taxable year.

Reviewed: January 2004

2900 MILITARY PERSONNEL

California Revenue and Taxation Code section 17022 defines "military or naval forces of the United States" and "armed forces of the United States" to include all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force. Members of the Marine Corp are included as Navy personnel. The terms also include the Coast Guard. Members of such forces include commissioned officers and personnel below the grade of commissioned officer.

Pursuant to the Servicemembers Civil Relief Act (50 U.S.C. Appen. section 571), CR&TC section 17140.5(c) provides:

- Nonresident servicemembers who come to California under military orders do not become a resident solely because of such orders.

A servicemember is usually domiciled in the state from which he or she entered the service. Military personnel who are California residents and assigned a homeport in California remain residents while at sea. See [FTB Pub. 1032](#) – *Tax Information For Military Personnel*.

If a servicemember establishes a California domicile while stationed in California, the military compensation is taxable. If a servicemember files a declaration with the military showing California as the legal residence, we treat the declaration as presumptive evidence of California residence. A change of "home of record" does not necessarily change a servicemember's state of residence.

According to CR&TC section 18521 (formerly section 18402), a married couple may file jointly or separately when either spouse is an active member of the armed forces of the United States.

These special rules apply to military personnel only. They do not apply to civilian employees of the military.

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